

**AMENDMENT TO THE THOMAS AMENDMENT IN
THE NATURE OF A SUBSTITUTE FOR H.R. 4157**

OFFERED BY M____.

S6301

Amend section 4 to read as follows:

1 SEC. 4. PRIVACY AND SECURITY PROTECTIONS.

2 The Secretary of Health and Human Services shall
3 provide for the enhancement of privacy protection and se-
4 curity standards, under the regulation promulgated under
5 section 264(c)(1) of the Health Insurance Portability and
6 Accountability Act of 1996 (42 U.S.C. 1320d-2 note) and
7 under the standards under section 1173(d) of the Social
8 Security Act (42 U.S.C. 1320d-1(d)), to include the fol-
9 lowing privacy and security protections:

10 (1) Except as provided in succeeding para-
11 graphs, each entity must—

12 (A) expressly recognize the individual's
13 right to privacy and security with respect to the
14 electronic disclosure of identifiable health infor-
15 mation;

16 (B) permit individuals to exercise their
17 right to privacy and security in the electronic
18 disclosure of individually identifiable health in-

1 formation to another entity by obtaining the in-
2 dividual's written or electronic informed con-
3 sent, which consent may authorize multiple dis-
4 closures;

5 (C) permit an individual to prohibit access
6 to certain categories of individuals (as defined
7 by the Secretary) of particularly sensitive infor-
8 mation, including data relating to infection with
9 the human immunodeficiency virus (HIV), to
10 mental health, to sexually transmitted diseases,
11 to reproductive health, to domestic violence, to
12 substance abuse treatment, to genetic testing or
13 information, and other information as defined
14 by the Secretary after consent has been pro-
15 vided under subparagraph (B).

16 (2) Informed consent may be inferred, in the
17 absence of a contrary indication by the individual—

18 (A) to the extent necessary to provide
19 treatment and obtain payment for health care
20 in emergency situations;

21 (B) to the extent necessary to provide
22 treatment and payment where the health care
23 provider is required by law to treat the indi-
24 vidual;

1 (C) if the health care provider is unable to
2 obtain consent due to substantial barriers to
3 communicating with the individual and the pro-
4 vider reasonably infers from the circumstances,
5 based upon the exercise of professional judg-
6 ment, that the individual does not object to the
7 disclosure or that the disclosure is in the best
8 interest of the individual; and

9 (D) to the extent that the information is
10 necessary to carry out or otherwise implement
11 a medical practitioner's order or prescription
12 for health services, medical devices or supplies,
13 or pharmaceuticals.

14 (3) The protections must prohibit the improper
15 use and disclosure of individually identifiable health
16 information by any entity.

17 (4) The protections must allow any individual
18 to enforce the individual's rights, and to have sanc-
19 tions and penalties imposed, against any entity that
20 has improperly obtained or disclosed individually
21 identifiable health information.

22 (5) The protections must require the use of rea-
23 sonable safeguards, including audit capabilities,
24 encryption, and other measures, against the risk of
25 loss or unauthorized access, destruction, use, modi-

1 fication, or disclosure of individually identifiable
2 health information.

3 (6) The protections must provide for notifica-
4 tion to any individual whose individually identifiable
5 health information has been lost, stolen, or used for
6 an unauthorized purpose by the entity responsible
7 for the information and notification by the entity to
8 the Secretary.